

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE	:	SC03-1846
NO. 02-466, JUDGE JOHN RENKE III	:	
	:	
	:	

MOTION TO ENFORCE SUBPOENA DUCES TECUM

The Judicial Qualifications Commission (the "JQC") pursuant to Commission Rules 12(a), 22 and 26 and Fla. R. Civ. P. 1.410(f), moves the Hearing Panel for entry of an order enforcing compliance with the subpoena duces tecum served on John K. Renke, II ("John K. Renke") on March 8, 2005, upon the following grounds.

1. John K. Renke is Judge John Renke, III's ("Judge Renke") father, and a Florida lawyer who is and has long been actively engaged in the practice of law in Pasco County, Florida. John K. Renke became Judge Renke's employer upon his graduation from law school and admission to the Florida Bar in 1995 and remained so until he became a circuit court judge in early 2003. John K. Renke also appeared as counsel for Judge Renke at the Rule 6(B) hearing on April 11, 2003, but shortly thereafter was replaced by Scott Tozian, Esquire.

2. The Amended Formal Charge No. 9 alleges that:

During the campaign in violation of Canon 1, Canon 2A and Canon 7A(3)(a) and §§ 106.08(1)(a), 106.08(5) and 106.19(a) and (b), Florida Statutes, your campaign knowingly and purposefully accepted a series of "loans"

totaling \$95,800 purportedly made by you to the campaign which were reported as such, but in fact these monies, in whole or in substantial part, were not your own legitimately earned funds but were in truth contributions to your campaign from John Renke, II (or his law firm) far in excess of the \$500 per person limitation on such contributions imposed by controlling law.

3. On March 8, 2005, Judge Renke's counsel (Mr. Tozian) accepted service on John K. Renke's behalf of a subpoena duces tecum from the JQC seeking the production of documents reasonably calculated to lead to the discovery of admissible evidence relevant to Amended Charge No. 9. A true and correct copy of such correspondence dated March 8, 2005 with the subpoena duces tecum attached thereto is attached hereto as Exhibit A.

4. Although John K. Renke subsequently provided some of the responsive documents for review, the majority of the documents (including all of the most pertinent billings and financial records) have and continue to be wrongfully withheld. Consequently, special counsel cannot complete John K. Renke's deposition until after the responsive documents have been produced in compliance with the subpoena duces tecum.

5. The responsive documents, including the case files and financial records, are extremely important. They relate directly to the compensation paid to Judge Renke in 2002 by his father, purportedly as Judge Renke's share of certain contingency fee cases, which purportedly settled in 2002. Judge Renke, in turn, used those same funds to finance his 2002 campaign. Indeed, \$98,500

of the roughly \$100,000 spent by the campaign came in the form of "loans" from Judge Renke.

6. John K. Renke has resisted complying with the subpoena duces tecum by asserting that disclosure of the documents could violate the attorney-client privilege and certain confidentiality agreements he allegedly had entered into in the underlying actions. Significantly, John K. Renke has never objected in writing to the subpoena duces tecum or moved to quash, and cannot now do so in a timely manner.

**SPECIAL COUNSEL HAS MADE EXTENSIVE
EFFORTS TO OBTAIN VOLUNTARY COMPLIANCE WITH
THE SUBPOENA DUCES TECUM TO NO AVAIL**

7. On April 12, 2005, special counsel responded to John K. Renke's verbally expressed concerns and explained in detail why neither the attorney-client privilege nor the confidentiality agreements were impediments to full compliance with the subpoena duces tecum. A true and correct copy of such correspondence dated April 12, 2005 is attached hereto as Exhibit B.

8. On April 19, 2005, special counsel reiterated the demand that the production be made, and pointed out that the "documents are extremely important and we cannot complete John K. Renke, II's deposition until we have reviewed all of the responsive documents and received copies of the documents we have and will select." A true and correct copy of such correspondence dated April 19, 2005 is attached hereto as Exhibit C. Yet the documents have not been

produced.

9. On May 3, 2005, special counsel again demanded compliance with the subpoena duces tecum "on or before May 10, 2005." Otherwise, the JQC would be forced to "move to enforce the March 8, 2005 subpoena duces tecum." A true and correct copy of such correspondence dated May 3, 2005 is attached as Exhibit D.

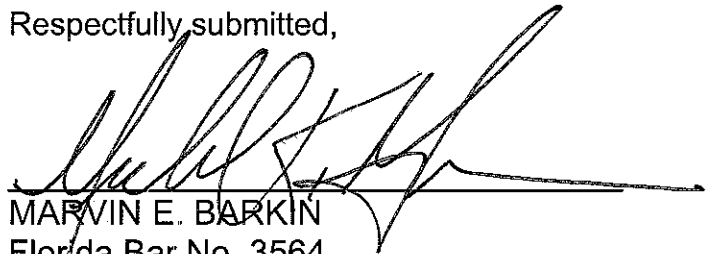
10. Despite all of the foregoing, as of the date of service of this motion (May 11, 2005), the responsive documents continue to be withheld in defiance of the March 8, 2005 subpoena duces tecum.

11. John K. Renke's ongoing defiance of the subpoena duces tecum threatens the current trial schedule and the final hearing set to commence on July 19, 2005. John K. Renke is a material witness on all charges, and as noted above, his deposition cannot be completed until he has complied. Moreover, since he has custody of all the financial and other records related to the compensation received by Judge Renke in 2002, John K. Renke is the only source for numerous responsive documents critically important to Amended Formal Charges 9 and 10.

CONCLUSION

12. For all of the foregoing reasons, this motion should be granted, the subpoena duces tecum promptly enforced, and John K. Renke should be held in contempt if he continues to fail or refuse to fully comply therewith.

Respectfully submitted,



MARVIN E. BARKIN

Florida Bar No. 3564

MICHAEL K. GREEN

Florida Bar No. 763047

TRENAM, KEMKER, SCHARF, BARKIN

FRYE, O'NEILL & MULLIS, P.A.

2700 Bank of America Plaza

101 East Kennedy Boulevard

Post Office Box 1102

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(813) 223-7474 (Telephone)

(813) 229-6553 (Fax)

Special Counsel for

Florida Judicial Qualifications Commission

and

THOMAS C. MACDONALD, JR.

Florida Bar No. 049318

General Counsel

Florida Judicial Qualifications Commission

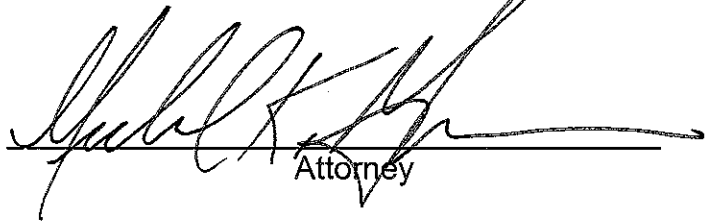
1904 Holly Lane

Tampa, FL 33629

(813) 254-9871 (Telephone)

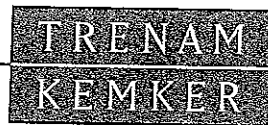
CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of Motion to Enforce Subpoena Duces Tecum has been furnished by U.S. Mail to **Scott K. Tozian, Esquire**, Smith & Tozian, P.A., 109 North Brush Street, Suite 200, Tampa, Florida 33602-4163 and **John K. Renke, II, Esquire**, Law Offices of John K. Renke, II, 7637 Little Road, New Port Richey, Florida 34654 on this 10th day of May, 2005.



Attorney

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2700 BANK OF AMERICA PLAZA
101 EAST KENNEDY BOULEVARD
P.O. BOX 1102 (33601)
TAMPA, FLORIDA 33602-5150
TELEPHONE (813) 223-7474
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Attorneys At Law

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www.trenam.com

Tampa

March 8, 2005

VIA FACSIMILE & U.S. MAIL

Scott K. Tozian, Esquire
Smith & Tozian, P.A.
109 North Brush Street, Suite 200
Tampa, Florida 33602-4163

Re: Inquiry Concerning Judge John Renke
Case No. 02-466
Our File No. 03-3273

Dear Scott:

In accordance with our agreement that you would accept service on behalf of John K. Renke, II, attached please find a subpoena duces tecum without deposition. We have set the return date for March 20, 2005, but of course we can be flexible regarding the actual date of production so long as we can review and copy the documents at least several days before we reconvene and complete Mr. Renke's deposition. Also, we are willing to review the documents on site in New Port Richey if it is more convenient.

Additionally, in an effort to accommodate your schedule, please provide us with dates upon which you are available for the depositions of Thomas Gurran, Esquire, Judy Braak, Scott Factor and Greg Townsend. We plan to depose Mr. Gurran and Ms. Braak the same day. We also plan to depose Mr. Factor and Mr. Townsend the same day (though not the same day as Gurran and Braak). Thus, we need at least 3 or 4 alternative dates upon which you will be available over the next 3 to 4 weeks. If we do not hear from you promptly, we will have no choice but to unilaterally set the depositions.

We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael K. Green".

Michael K. Green

MKG:cfg
Enclosure

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE III

: SC03-1846
:
:

SUBPOENA DUCES TECUM FOR DEPOSITION

Judy Moukazis & Associates
7530 Little Road
New Port Richey, Florida 34654

THE STATE OF FLORIDA:

TO: John K. Renke, II
Law Offices of John K. Renke, II
7637 Little Road
New Port Richey, Florida 34654

YOU ARE HEREBY COMMANDED to appear before Judy Moukazis & Associates, a commissioner authorized by law to take depositions, at the **offices of Judy Moukazis & Associates, (Court Reporters Annex), 7530 Little Road, New Port Richey, Florida 34654** on **March 20, 2005 at 9:00 a.m.** and to have with you at that time the documents attached hereto as Exhibit A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. **You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production.** You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. **You may mail or deliver the copies to Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, Professional Association, 101 East**

Kennedy Boulevard, 2700 Bank of America Plaza Tampa, Florida 33602 and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production.

If you fail to:

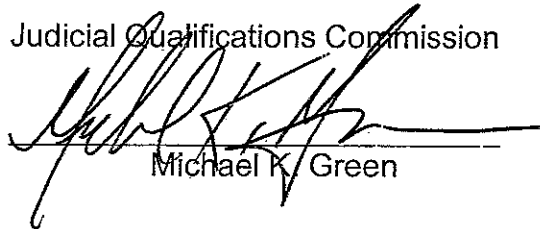
- (1) appear as specified; or
- (2) furnish the records instead of appearing as provided above; or
- (3) object to this subpoena,

you may be in contempt of court. Unless excused from this subpoena, you shall respond to this subpoena as directed.

DATED this 8th day of March, 2005.

MICHAEL K. GREEN
Florida Bar No. 763047
TRENAM, KEMKER, SCHARF, BARKIN,
FRYE, O'NEILL & MULLIS,
Professional Association
101 E. Kennedy Blvd., Suite 2700
Tampa, Florida 33602
(813) 223-7474
(813) 229-6553 Facsimile
Special Counsel for the
Judicial Qualifications Commission

Judicial Qualifications Commission



Michael K. Green

AMERICAN DISABILITIES ACT (ADA)

If you are a person with a disability who needs a reasonable accommodation in order to participate in this proceeding, you are entitled at no cost to you, to the provision of certain assistance. Please contact Trenam Kemker, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, Tampa, Florida 33602, (813) 223-7474, within two (2) working days of your receipt of this subpoena; if you are hearing or voice impaired call 1-800-955-8771.

EXHIBIT A

1. All documents reflecting, referring or relating to all compensation or other consideration paid or provided to John Renke, III by John K. Renke, II (or his law firm) from January 1, 1995 through December 31, 2002.
2. All documents reflecting, referring or relating to Aver v. Campo, Pinellas County Case No. 00-2221-CI-7, Amer v. Amex, Pinellas County Case No. 01-000884-CI-021, Voorhees v. Pearson, Hillsborough County Case No. 99-07433, Bowler v. Nationwide, Pasco County Case No. 51-2002-CA-1206, Timber Oaks v. Triglia, Pasco County Case No. 95-1535CA; Cusumano v. Timber Oaks, Pasco County Case No. 92-2346CA and/or any other representation related to the Bowler case cited above including without limitation, case files, pleading files, correspondence files, agreements, settlement agreements, settlement statements, checks or other evidence of payment of settlement consideration or legal fees or expenses and all time and billing records.
3. All documents reflecting, referring or relating to any employment or other contracts or agreements regarding legal fees, splitting or sharing of fees or payment of compensation or other consideration to John Renke, III by John K. Renke, II (or his law firm) between John K. Renke, II (or his law firm) and John Renke, III.
4. All billing or time records in any way related to the cases identified in Request No. 2 hereof or any other cases on which John Renke, III worked for which he received compensation in 2002 from John K. Renke, II (or his law firm).
5. The transcripts or other documents related to all trials in which John Renke, III acted as lead counsel or appeared and acted as sole counsel since January 1, 1995.
6. All documents reflecting the receipt, disbursement, investment or payout of funds derived from litigation by John K. Renke, II (or his law firm) which were used in whole or in part to pay or provide by John K. Renke, III (or his law firm) compensation or other consideration to John Renke, III in 2002.

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April 12, 2005

VIA FACSIMILE AND U.S. MAIL

Scott K. Tozian, Esquire
Smith & Tozian, P.A.
109 North Brush Street, Suite 200
Tampa, Florida 33602-4163

Re: Inquiry Concerning Judge John Renke
Case No. 02-466
Our File No. 03-3273

Dear Scott:

We have considered your concerns regarding the attorney-client privilege and any confidentiality agreements that may exist in the cases (and case files) we have subpoenaed for the Renke law firm. We have concluded that there is no need or justification for any kind of protective order, and discovery of the subpoenaed documents can and should expeditiously proceed for several reasons.

Under Florida Bar Rule 4-1.6(c)(4), the attorney-client privilege is waived as a matter of law where disclosure of otherwise privileged information is necessary for a lawyer (or judge) to defend himself. Rule 4-1.6(c)(4) specifically provides that a "lawyer may reveal" confidential information "to respond to allegations in any proceeding concerning the lawyer's representation of a client." Since Judge Renke represented all of the parties involved and now faces judicial disciplinary proceedings which implicate those representations, the attorney-client is waived by operation of law. Thus, production of the subpoenaed document can proceed without any risk whatsoever of violating the attorney-client privilege.

The confidentiality agreements with opposing parties in those cases, to the extent any exist, can only provide that if the information subject to any such agreement is subpoenaed or otherwise sought through judicial process, then the Renke's obligation thereunder is met by giving notice to the opposing party and giving them an opportunity to object to or otherwise oppose the subpoena. Thus, since all of these case files have been subpoenaed, the Renkes need only inform the opposing party(ies) to any such confidentiality agreements that the material has been subpoenaed and give them the

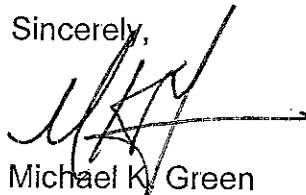
opportunity to object. Under the circumstances, it seems extremely unlikely any such parties would do so.

Accordingly, the Renkes only need to give any such parties notice promptly and give them a reasonable time to object to the subpoena. If they do not do so, then all of the documents can be produced without any risk of violating any confidentiality agreements. If there are objections, we will take the matter to the Panel for a ruling. In either event, the documents can be produced without any risk of violating any applicable confidentiality orders.

As you know, we cannot finish discovery, including completing John K. Renke, II's deposition, until all of the responsive documents have been provided. We therefore expect you to take appropriate action to make the balance of those documents available promptly. If you are not prepared to do so, please inform us promptly so we can file an appropriate motion.

We look forward to hearing from you.

Sincerely,

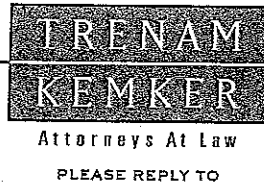
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Michael K. Green

MKG/pah

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Tampa

April 19, 2005

VIA FACSIMILE & U.S. MAIL

Scott K. Tozian, Esquire
Smith & Tozian, P.A.
109 North Brush Street, Suite 200
Tampa, Florida 33602-4163

Re: Inquiry Concerning Judge John Renke
Case No. 02-466
Our File No. 03-3273

Dear Scott:

We have not heard from you to arrange for completing the production of documents by John K. Renke, II and his law firm pursuant to the previously served subpoena duces tecum. As you know, these documents are extremely important and we cannot complete John K. Renke, II's deposition until we have reviewed all of the responsive documents and received copies of the documents we have and will select. We previously addressed the concerns regarding the attorney-client privilege and potential confidentiality orders, thus we expect that these responsive documents will be promptly produced. If not, please inform us and we will place any such outstanding issues before the Panel so that essential discovery can proceed consistent with the schedule recently agreed upon.

Accordingly, please inform us when you can and will make the responsive documents available. If you intend to voluntarily produce the responsive documents we are prepared to allow you until the week of May 9, 2005 to do so (this will give you more than sufficient additional time to deal with any confidentiality agreement notice requirements). We can then complete John K. Renke, II's deposition within a week or so of actually receiving the documents.

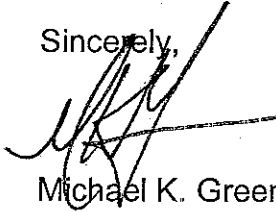
Finally, we have a second subpoena duces tecum to John K. Renke, II. Please let us know immediately whether you will accept service on his behalf. If not, we will have it personally served upon him.

EXHIBIT C

Scott K. Tozian, Esquire
Smith & Tozian, P.A.
April 19, 2005
Page 2

We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to be "MKG", with a long horizontal stroke extending to the right.

Michael K. Green

MKG:cfg
Enclosure

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**TRENAM
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May 3, 2005

VIA FACSIMILE & U.S. MAIL

Scott K. Tozian, Esquire
Smith & Tozian, P.A.
109 North Brush Street, Suite 200
Tampa, Florida 33602-4163

Re: Inquiry Concerning Judge John Renke
Case No. 02-466
Our File No. 03-3273

Dear Scott:

There are several issues that must be dealt with promptly if we are going to be able to meet the discovery and final hearing schedule we provided to Judge Wolfe and the Hearing Panel.

1. The ongoing failure to produce the documents responsive to the subpoena duces tecum to John K. Renke, II for which you accepted service on March 8, 2005, effectively precludes us from being able to complete discovery including the deposition of John K. Renke, II. Although some of the documents have been produced, the vast majority, including all of the financial information continues to be withheld from us in defiance of the subpoena duces tecum.

After making some initial production, John K. Renke, II refused to comply by asserting that full production would somehow violate the attorney-client privilege and certain alleged confidentiality agreements. We considered these objections, explained in writing why these objections were unfounded and no impediment to full production. Yet there was no response from you or the senior Renke. Indeed, even if the objections had any merit, they were waived when you and the senior Renke did not object to the March 8, 2005 subpoena duces tecum in a timely manner and voluntarily produced some relevant, responsive documents after accepting service of the subpoena duces tecum.

Recently at Declan Mansfield's deposition on April 28, 2005 you appeared (for the very first time) to disclaim responsibility for the production and asked whether we were dealing directly with John K. Renke, II to get the documents. Such buck passing is

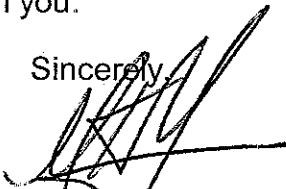
Scott K. Tozian, Esquire
Smith & Tozian, P.A.
May 3, 2005
Page 2

unacceptable and inconsistent with our prior course of dealing. In any event, we expect prompt and full production of the responsive documents on or before May 10, 2005 or we will be forced to move to compel and move to enforce the March 8, 2005 subpoena duces tecum.

2. Please finally confirm precisely what capacity John K. Renke, II is acting in this proceeding. Obviously, he is a material witness. The record already establishes that he was extensively involved in all aspects of the campaign, even appearing at campaign events to speak on his son's behalf. He is also at the center of the campaign finance charges. Yet John K. Renke, II appeared as Judge Renke's attorney before the Investigative Panel and as Thomas Gurran's attorney at Mr. Gurran's deposition on April 6, 2005. If John K. Renke, II intends to continue to act as an attorney for his son or otherwise in this proceeding, including the final hearing, please confirm it in writing and identify precisely whom he is representing, so we can definitively deal with the issue. If John K. Renke, II recognizes that he is a material witness (possibly the material witness in the case), then he will understand that it is not appropriate for him to appear at the forthcoming depositions, much less sit at counsel's table at trial. Indeed, at the final hearing we will invoke the rule and preclude John K. Renke, II from being present until he has finished testifying like any other witness.

We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "MKG", with a long horizontal line extending to the right.

Michael K. Green

MKG:cfg